CONFIDENTIALITY OF Medical Information (PHI) (Ch. 2, AR 40-66)

Terminal Learning Objective

Demonstrate knowledge of the correct policies, guidance, and methods for managing the confidentiality of

Protected Health Information (PHI) IAW AR 40-66, Medical Record Administration; AR 25-55, Department of the Army Freedom of Information Act Program; AR 340-21, The Army Privacy Act; and AR 600-85, Drug and Alcohol Abuse Program.

Enabling Learning Objectives

- **ELO A**
  Identify the basic policies governing confidentiality of protected health information.
- **ELO B**
  Identify the purposes and uses of the Privacy Act, Freedom of Information Act (FOIA) and the Health Insurance Portability and Accountability Act (HIPAA) of 1996.
- **ELO C**

Identify the roles and responsibilities of the personnel charged with safeguarding and releasing protected health information.

Enabling Learning Objectives

- **ELO D**

Identify the different procedures and regulatory guidance for release of information when the patient consents to disclosure.

- **ELO E**

Identify the different procedures and regulatory guidance for disclosure of information without the consent of the patient.

- **ELO F**

Identify the regulatory guidance for processing requests for PHI, restrictions, and revocations.

Enabling Learning Objectives

- **ELO G**

Identify the regulatory guidance for managing the medical records of teenage family members.

- ***ELO H***

Identify the regulatory guidance for disclosure of medical records containing classified defense information.

- **ELO I**

Identify the regulatory guidance for research using military medical records.

Protected Health Information

- Individually Identifiable Information
  - –Age
  - –Address/E-mail Address
  - –SSN
  - –Physical/Mental Health Condition
  - –Health Care Services

BASIC POLICIES

- Confidentiality of PHI of both living and deceased individuals will be ensured to the fullest extent possible.
- PHI released only if authorized by law and regulation (this includes states' laws).
- No information pertaining to the identity, treatment, prognosis, diagnosis, or participation in the Army's Substance Abuse Program (ASAP) will be released except IAW AR 600-85 (Ch. 6) and AR 40-66 (Ch.8).

BASIC POLICIES

- Unless otherwise authorized by law or regulation, no other person/organization will be granted access to PHI.
- Disclosure of protected health information without proper authorization may lead to adverse administrative action or disciplinary proceedings.
- Under HIPAA
  - Civil Penalties: range from $100 per violation to maximum of $25,000 per year for the same violations.
  - Criminal Penalties: vary from $50,000 and/or 1-year imprisonment to $250,000 and/or 10-years imprisonment.

BASIC POLICIES

- When protected health information is officially requested for a use other than patient care, only enough information will be provided to satisfy the request.

- Clerical and administrative personnel (secretaries, receptionists, etc.) who have access to protected health information as part of their duties ***must*** be trained in their obligation to maintain the confidentiality and privacy of the information.

BASIC POLICIES
(Uses of protected health information)

- Patient Care
  - Diagnosis and treatment
  - Healthcare Operations and Preventive Care
  - Payment
- Other uses
  - Monitor the delivery of healthcare services
  - Conduct medical research
  - Medical education
  - Facilitate hospital (healthcare facility) accreditation
  - Other official uses

ELO A

BASIC POLICIES
(Primary Exceptions, AR 40-66, para. 2-2h)

Policies/procedures in AR 40-66 do not apply specifically when members of the workforce exercise their right to:

- File a complaint with Department of Health and Human Services (HHS).
- Testify, assist or participate in an investigation, compliance review, proceeding, or hearing under the Social Security Act.

ELO A

BASIC POLICIES
(Primary Exceptions, AR 40-66, para. 2-2h)

- Oppose any act unlawful by the privacy laws.
- Disclose PHI as a whistleblower (to health oversight agency, public health authority or attorney retained to help determine whistleblower's legal options.).
- Disclose PHI to a law enforcement official ***if*** the employee is a victim of a crime, the PHI is about the suspect, and limited to identification information.

PURPOSE OF PRIVACY ACT

- Provides certain safeguards:
  - Prevents federal government unauthorized information collection.
  - Prevents misuse of information in federal government records.
  - Permits individual access to his/ her federal government records.
  - Protects individual's right to know in advance what specific personal information requested will be used for.

PURPOSE OF PRIVACY ACT

- Focuses on four basic policy objectives:

  (1) To restrict disclosure of personally identifiable records

  (2) To grant individuals increased rights of access to agency records

  (3) To grant individuals the right to seek amendment of agency records

  (4) To establish a code of "fair information practices"

- Record – Collection or grouping of information

PURPOSE OF FOIA

- Provide public greatest possible access to federal government records:
  - Not limited to personal information
  - Can include public record data
    - » Birth & death certificates
    - » Marriage certificates

PURPOSE OF FOIA

- Safeguard public's right to:
  - Access state information
  - Access local information
  - Access federal agencies information

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)

- Protect insurance coverage for workers and their families when they change or lose their jobs.
- Reduce health care fraud and abuse.
- Enforce standards for the digital transmission of and storage of health information.
- Guarantee security and privacy of health information.
- Simplify the administration of health insurance.

HIPAA

- Title II – Administrative Simplification Provisions
- Four Main Areas
  - Electronic Transactions and Code Sets
  - Unique Identifiers
  - Privacy
  - Security
- Covered Entities – Health care clearinghouses; health plans, health care providers that conduct transactions in electronic form

ROLES AND RESPONSIBILITIES

- MTF Commander
- Chief, Patient Administration Division (PAD)
- Local Staff Judge Advocate (SJA)
- Local Privacy Act/FOIA Officer
- Unit Commander

ROLES AND RESPONSIBILITIES *(MTF Commander)*

- Official custodian of medical records.
- Ultimate responsibility for release of information.

ROLES AND RESPONSIBILITIES
(Chief, Patient Administration)

- Acts as military treatment facility (MTF) commander's appointed representative for matters pertaining to medical records management and information.

- Keeps the professional staff informed of the requirements for medical records and healthcare documentation.

ROLES AND RESPONSIBILITIES
(Chief, Patient Administration)

- Receives and manages all requests for protected health information.
- Determines legitimacy of requests.

ROLES AND RESPONSIBILITIES *(Local SJA)*

- Provides guidance /advice on
  - Potential litigation cases
  - Potential controversial/ doubtful cases
- Forwards information to requesting agency when authorized.

ROLES AND RESPONSIBILITIES

(Local Privacy Act/ FOIA Officer)

- Provides technical guidance/ assistance on processing requests submitted under provisions of these laws.

ROLES AND RESPONSIBILITIES
(Unit Commander)

- Ensure soldiers abide by regulation and local records management policy.
- Similar duties as MTF Commander and C, PAD if Army Reserve and National Guard Commanders are in remote locations
  - Must have and be familiar with AR 40-66.

RELEASE OF INFORMATION
(With Patient Consent)

- **Requests from the patient**
  - In writing (either DA Form 5006 or a letter).
  - Patient does not have to disclose reason for request.
- ***Exceptions***
  - Physician/dentist determines access to record could adversely affect patient's physical, mental, or emotional health.
  - Must be documented.
  - Patient will be asked to designate a physician/dentist to receive record.
  - Army still has obligation to eventually provide the information.
  - Records will be identified with conspicuous strip of tape.

RELEASE OF INFORMATION
(With Patient Consent)

- **Requests from third parties**
  - Permission by patient (and request from third party) must be in writing (preferably on DA Form 5006).
  - Must have patient's signature and be dated.
  - Must be submitted to MTF within 1 year of date signed.
  - Must state specific information the patient has consented to release.
  - Must state purpose for which third party will use information.
  - Contain name and organization to whom information will be released.

RELEASE OF INFORMATION
(With Patient Consent)

Requests from third parties:

- ***Exception:*** **Patients who are minors**
  - Parent or legal guardian must sign consent on behalf of child.
  - Applies to any person who is not 18 and/or is not emancipated as determined by law of State in which MTF is located.
- ***Exception:*** **Patients who are determined mentally incompetent by court**
  - Legal guardian of patient may sign consent on behalf of patient.
  - Must provide copy of court order appointing guardian.

RELEASE OF INFORMATION
(Without Patient Consent)

(Requests from within DoD for following situations:)

- When required by law or Government regulation.
- For public health purposes.
- About victims of abuse or neglect.
- For health oversight activities authorized by law.
- For judicial or administrative proceedings.

RELEASE OF INFORMATION
(Without Patient Consent)

(Requests from within DoD for following situations:)

- For law enforcement purposes.
- Concerning decedents in limited circumstances.
- For cadaveric organ, eye, or tissue donation purposes.
- For research involving minimal risk.
- To avert a serious threat to health or safety.

RELEASE OF INFORMATION
(Without Patient Consent)

(Requests from within DoD for following situations:)

- For specialized Government functions to
  - Determine fitness for duty
  - Determine fitness to perform particular mission, assignment, order or duty
  - Carry out activities under authority of DoDD 6490.2
  - Report on casualties in any military operation or activity
  - Carry out any other activity necessary to the proper execution of the mission of the Armed Forces
- For worker's compensation programs.

RELEASE OF INFORMATION
(Without Patient Consent)

(Requests from Defense Security Service:)

- **DSS Form 40** (Alcohol and Drug Abuse Information Release and Consent to Redisclosure) required for release of ASAP records.

- **"Authorization for Release of Medical Information"** included in SF 86 (Questionaire for National Security Positions) required for release of health record (HREC) information.

- **DSS Form 16** (Doctor/Patient Release Statement) required before releasing general records maintained by doctors, hospitals, or other institutions (including if DSS agent wishes to interview doctor)

RELEASE OF INFORMATION
(Without Patient Consent)

Typical Examples:

- Patient's Condition & Diagnosis
- Births/Deaths/Cases Of Communicable Diseases
- Patient As Inmate
- Army (Surgeon General) SG Approval For Studies
- Government's Collection Of Claim

PATIENT'S CONDITION & DIAGNOSIS

- NOK
  - Person(s) named by patient to notify in case of emergency
- DOD Personnel
  - Those who must have access to the information in the performance of their duties
- Defense Security Service (DSS) Personnel
  - As related to duties
  - Must have appropriate release authorization documents

BIRTHS/DEATHS/CASES OF COMMUNICABLE DISEASES

- Local Officials
  - If required by local laws
- May include name of patient along with condition or may just be statistical information

PATIENT AS INMATE

- All Necessary Information/Records
  - FEDERAL HOSPITAL
  - STATE HOSPITAL
  - PENAL INSTITUTION

ARMY SG APPROVAL FOR STUDIES

- All Necessary Information/Records
  - NATIONAL ACADEMY OF SCIENCES
  - NATIONAL RESEARCH COUNCIL
  - OTHER ACCREDITED AGENCIES

ARMY SG APPROVAL FOR STUDIES

EXCEPTION

- No release for information on substance abuse

- AR 600-85 covers Army's Substance Abuse Program

GOVERNMENT'S COLLECTION OF CLAIM

- All Necessary Information/Records
  - STAFF JUDGE ADVOCATE (SJA)
  - LEGAL OFFICER OF THE COMMAND

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- All requests and authorizations must be in writing; DA Form 5006 should be used
  - Requests will be acted upon within 30 days
  - In emergency cases, verbal request and authorization may be accepted, but must be followed in writing as soon as possible

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- Authorization for release of PHI will normally be documented in writing
  - In emergency situations, MTF commander or patient administrator may verbally authorize release
  - Immediately after granting verbal authorization, a memorandum for record should be prepared documenting the reason for verbal authorization

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- Legitimacy of requests determined by patient administrator or MTF Commander; seek advice from local SJA to ensure legal legitimacy
- Only specific information requested to satisfy terms will be provided

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- For approved requests, certified copies (copies that are certified by the patient administrator as a “true copy”) will normally be provided.
  - If request is for disclosure of original records, it must be justified in writing why certified copies will not adequately fulfill the purpose for the request
  - Advice of local SJA should be sought regarding requests for original records

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- Copies of requested information should normally be picked up
  - Facsimile transmissions are acceptable under emergency situations provided appropriate safeguarding measures are in place
  - **Confidentiality Notice** must accompany facsimiles

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

Sample

*****CONFIDENTIALITY NOTICE*****

The documents accompanying this facsimile transmission contain confidential information, belonging to the sender, that is legally privileged. This information is intended only for the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to any other party and is required to destroy the information after its stated need has been fulfilled.

If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this telecopy in error, please notify the sender immediately to arrange for return of these documents.

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- Copies of request, consent forms, authorization and notation of what information was released will be filed in patient's medical record

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- A patient has the right to **request restriction** on the uses and disclosures of their medical record.
  - The MTF/DTF is not required to agree to the restriction.
    - » Request should be denied if MTF/DTF cannot reasonably accommodate it, if it conflicts with applicable DOD or DA regulations or directives, or for any other appropriate reason.
    - » A response to the request should be provided to the requestor as soon as possible.

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- Requested restriction (cont.)
  - **Approved requests** should be acted upon in a timely manner and in writing
    - » Restrictions will not be effective above the management authority level that agreed to the restriction
    - » No restriction will be effective unless the person agreeing to the request is authorized to do so and is done in writing.

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- Requested restriction (cont.)
  - The needs of the patient should be weighed against the burden that would be placed on the facility to comply with the request.
  - If the restriction is granted, the patient should be informed that is it not permanent, applies only to the individual or MTF that granted it, and does not transfer from one facility to another.

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- An individual has the right, at any time, to revoke an authorization they previously gave
  - Revocation must be in writing
  - Only worthwhile if authorization had not already been acted upon
  - Revocation will be retained by MTF along with original authorization

ELO F PROCESSING REQUESTS FOR PROTECTED HEALTH INFORMATION

- An individual has the right to receive an accounting of PHI disclosures, when requested, up to six year prior to date of request except for those listed in AR 40-66, para. 2-5k(1-9).

MEDICAL RECORDS OF TEENAGE FAMILY MEMBERS

- Minors and parents/guardians have certain rights to access under the Privacy Act.
- Law of the State in which minor is located determines whether child is a minor.
- PADs need to be aware of statutes or regulations for:
  - Drug & alcohol abuse
  - Venereal disease control
  - Birth control
  - Abortion

DISCLOSURE OF MEDICAL RECORDS CONTAINING CLASSIFIED DEFENSE INFORMATION

- Not normally included in medical records.
  - Should be avoided unless doing so jeopardizes the interests of the patient or the Government
- Such information will be safeguarded and transferred according to AR 380-5.
- SF 600 will be used to state the record has such information

DISCLOSURE OF MEDICAL RECORDS CONTAINING CLASSIFIED DEFENSE INFORMATION

- Such documents will be screened often to see whether declassification is possible.
  - When declassified, a note will be made on SF 600 and documents will be returned to the custodian of the record.

DISCLOSURE OF MEDICAL RECORDS CONTAINING CLASSIFIED DEFENSE INFORMATION

- If records are to be sent to VA
  - Any separate file of documents bearing defense information will be reviewed for possible declassification
  - Documents that cannot be declassified will not be sent to VA

RESEARCH USING MILITARY MEDICAL RECORDS

- Qualified people may have access to Army medical records and biostatistical information for research and study.
- Access may be granted to records in MTFs and DTFs, Army record centers, and facilities of the General Services Administration..

RESEARCH USING MILITARY MEDICAL RECORDS

- Medical records used for research will not be removed from the MTF or DTF or the center; space and facilities will be furnished by the custodian.
- Commanders of MTFs and DTFs will not borrow retired records for researchers.
- The Surgeon General will approve any exception.

RESEARCH USING MILITARY MEDICAL RECORDS

Approval of requests.

- The Surgeon General will approve all requests for research except as below.

- The MTF/DTF commanders will approve requests from personnel under their command whose research projects involve medical records at that facility.

RESEARCH USING MILITARY MEDICAL RECORDS

Submission of requests.

- Except for requests by personnel under MTF/DTF commanders, all requests will be submitted to PASBA

- Requests must:
  - Provide the names and addresses of the researcher and of any assistants.
  - List the professional qualifications of the researcher and of any assistants.

RESEARCH USING MILITARY MEDICAL RECORDS

Submission of requests.

- Requests must:
  - Describe the researcher's project or field of study.
  - Provide the reason for requesting the use of Army records.
  - Name the particular records needed (for example, the historical range for which records are desired) and their location.
  - Give inclusive dates when access is wanted.
  - Attach evidence of institutional approval (training director) for residency training projects.

RESEARCH USING MILITARY MEDICAL RECORDS

Submission of requests.

- Have each person named in the request sign an agreement that lists the following conditions:
  - Information will be treated according to the ethics of the medical profession.
  - The identities of people will not be divulged without their permission, to include photographs.
  - Permission to study the records does not imply approval by The Surgeon General.

RESEARCH USING MILITARY MEDICAL RECORDS

Submission of requests.

- Have each person named in the request sign an agreement that lists the following conditions:
  - All identifying entries about a person will be deleted from abstracts or reproduced copies of the records.

RESEARCH USING MILITARY MEDICAL RECORDS

Submission of requests.

- Have each person named in the request sign an agreement that lists the following conditions:

  – Any published material or lectures on the particular project or study will contain the following statement: "The use of Army medical records in the preparation of this material is acknowledged, but it is not to be construed as implying official Department of the Army approval of the conclusions presented."

RESEARCH USING MILITARY MEDICAL RECORDS

Access authorization proof.

- Any approval letter from The Surgeon General allowing access to records will be shown to the proper authority (Chief, Patient Administration Division; health information administrator) when requesting access to records at the MTF level

Enabling Learning Objectives

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